

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
SUPPLEMENTAL
BRIEF**

75-1138

To be argued by
STANLEY H. FISCHER

United States Court of Appeals

For the Second Circuit.

B 7cc
Pays

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

LOUIS WOLFISH,

Defendant-Appellant.

SUPPLEMENTAL
BRIEF FOR APPELLANT

STANLEY H. FISCHER

Attorney for Defendant-Appellant,

LOUIS WOLFISH

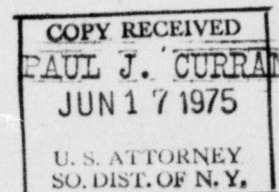
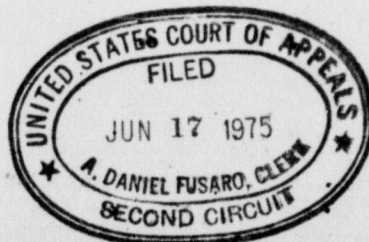
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MM 3-0054

On the Brief:

STANLEY H. FISCHER



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POINT XII

THE FAILURE BY THE COURT TO ORDER SUA
SPONTE A PATE MENTAL COMPETENCY
EVIDENTIARY HEARING VIOLATED APPELLANT'S
CONSTITUTIONAL RIGHTS AS SECURED BY THE
FOURTEENTH AMENDMENT

Pate v. Robinson 383 U.S. 775 constitutionally mandated a
sanity hearing by the Court sua sponte where a bona fide doubt
exists as to the defendant's competence to stand trial.

In the instant case the Court recognized the issue of com-
petency to stand trial when it stated:

"The Court: That is what remains, the question
of his competency to stand trial or otherwise
dispose of the case" (43ai).

Further, in denying the defendant his right to be co-counsel,
the Court said:

Further, the mere suggestion that there is
some question as to your competency seriously
raises a question as to whether you should be
allowed to in any way assume a professional
role in terms of your own defense. (43a iii)

The Court upon recognizing the issue must hold a hearing
pursuant to Pate. See Rand v. Swenson, 501 F2d. 394 (8th Cir. 1974).
Since the question is competency at the time of trial, a new trial
after such a hearing is mandated.

"The trial court's failure to make such in-
quiry deprived (Moore) of his constitutional
right to a fair trial (Pate v. Robinson supra
383 U.S. at 385, 86 S. Ct. at 842), unless we
can say that there was before the trial court
no substantial evidence casting doubt upon
his competency at any time before he was sentenced.

The record forbids that conclusion."
Moore v. United States, 464 F2d 663
(9th Cir. 1972).

The fourteenth Amendment violation requires that the
judgement of conviction be reversed and a new trial be granted.